



9110-04

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2018-0077]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security, United States Coast Guard.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify, rename, and reissue a current DHS system of records titled, “Department of Homeland Security/United States Coast Guard-008 Courts-Martial Case Files System of Records.” This system of records allows the DHS/United States Coast Guard (USCG) to collect and maintain records regarding military justice administration and documentation of USCG Courts-Martial proceedings. DHS/USCG is renaming this system to “DHS/USCG-008 Courts-Martial and Military Justice Case Files System of Records,” and updating this system of records notice to include new and modified routine uses, as well as remove one existing routine use. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

The exemptions for the existing system of records will continue to be applicable for this modified system of records notice, and this modified system will be continue to be included in DHS’s inventory of record systems.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This modified system will be effective upon publication. New or modified routine uses will be effective **[INSERT**

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2018-0077 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528-0655.

Instructions: All submissions received must include the agency name and docket number DHS-2018-0077. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Brian Burns, (202) 475-3507, HQS-DG-M-CG-61-PII@uscg.mil, Privacy Officer, Commandant (CG-6d), United States Coast Guard, Mail Stop 7710, Washington, D.C. 20593. For privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. sec. 552a, the Department

of Homeland Security (DHS) United States Coast Guard (USCG) proposes to modify, rename, and reissue a current DHS system of records titled “DHS/USCG-008 United States Coast Guard Courts-Martial Case Files System of Records.” This system of records is being renamed “DHS/USCG-008 Courts-Martial and Military Justice Case Files System of Records.” This system of records allows DHS/USCG to collect and maintain records regarding military justice administration and documentation of USCG Courts-Martial proceedings. In order to meet the requirements of the Uniform Code of Military Justice and Rules for Courts-Martial that will take effect on January 1, 2019, in accordance with Executive Order 13825 titled “2018 Amendments to the Manual for Courts-Martial,” this notice includes the following updates:

- (1) Routine Use “J” is required to meet the requirements of the Manual for Courts-Martial, United States (2019 ed.), Pt. II, Rules for Courts-Martial 1106 and 1106A; and
- (2) Routine Use “K” is required to meet the requirements of the Manual for Courts-Martial, United States (2019 ed.), Pt. II, Rule for Courts-Martial 1112(b).

Routine Use “J” will allow the accused and crime victims or their counsel to access the court-martial records in order to prepare matters to be submitted to the convening authority within the time limit prescribed in the Rules for Court Martial. Routine Use “K” will allow the accused, a victim of an offense of which the accused was charged, if the victim testified during the proceedings, and any victim named in a specification of which the accused was charged, to receive a copy of the record of trial upon request per the Rules for Courts-Martial. Routine Uses “J” and “K” are new and will be replacing

Routine Use “L” from the existing SORN.

Additionally, DHS/USCG is modifying Routine Use “E” and adding Routine Use “F” to conform to OMB Memorandum M-17-12 “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Routine Use “T” from the previous version of this SORN regarding the sharing of statistical data about the information in this system of records has been removed. All routine uses have been renumbered to account for these changes. Lastly, DHS is making non-substantive changes to the text and formatting of this SORN to align with previously published DHS SORNs.

Consistent with DHS’s information sharing mission, records covered by this SORN may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCG may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS’s inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals’ records. The Privacy Act applies to information that is maintained in a “system of records.” A “system of records” is a group of any records under the control of an agency from which information is retrieved by the

name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/USCG-008 Courts-Martial and Military Justice Case Files System of Records.

In accordance with 5 U.S.C. sec. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER: Department of Homeland Security (DHS)/United States Coast Guard (USCG)-008 Courts-Martial and Military Justice Case Files System of Records.

SECURITY CLASSIFICATION: Unclassified.

SYSTEM LOCATION: Records are maintained at the United States Coast Guard Headquarters in Washington, D.C., and field offices. The Case Matter Management Tracking System (CMMT) is the information technology (IT) system in which records associated with this function are maintained.

SYSTEM MANAGER(S): Commandant, Office of Military Justice (CG-LMJ), United States Coast Guard Headquarters, HQS-DG-LST-CG-LMJ@uscg.mil, 2703 Martin Luther King Jr. Ave. SE Washington, D.C., 20593-7213.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: 14 U.S.C. 632; 10 U.S.C. secs. 801, 806b, 815, 822, 823, 865, and 892, and other related provisions of Title 10, Armed Forces, Subtitle A – General Military Law, Chapter 47 - Uniform Code of Military Justice; E.O. 11835; E.O. 12198, E.O. 12473, E.O. 12233, and E.O. 13825; DHS Delegation 00170.1, “Delegation to the Commandant of the U.S. Coast Guard.”

PURPOSE(S) OF THE SYSTEM: The purpose of this system is to document military justice administration and documentation of USCG Courts-Martial proceedings relating to all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, court martial.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Categories of individuals covered by this system include all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM: The categories of records in this system include:

- Individual’s name;
- Date of birth;
- Social Security number (SSN) (if collected);
- Employee identification number;
- Phone numbers;
- Email addresses;
- Addresses;

- Job-related information including: job title, rank, duty station, supervisor's name, and contact information; and
- Records of Trial (contents are in accordance with Article 54 of the Uniform Code of Military Justice and Rules for Court-Martial 1112, which includes charge sheets, exhibits, transcript of trial, sentencing report, arguments, and various other documents).

RECORD SOURCE CATEGORIES: Records are obtained from USCG investigating officers, military, and civilian personnel. The records include the records of pre-trial preliminary hearings and records of trial for individual courts-martial. They also include records from post-trial hearing and appellate review of such courts-martial, including records of review in the Office of the Judge Advocate General and Chief Counsel of the Coast Guard, the Coast Guard Court of Criminal Appeals, and the Court of Appeals for the Armed Forces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES: In addition to those disclosures generally permitted under 5 U.S.C. sec. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. sec. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. sec. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing,

minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To the confinement facility, if confinement is adjudged, and the confinement facility is not a USCG facility.

J. To accused and crime victims or their counsel for the purpose of submitting matters pursuant to the Manual for Courts-Martial (2019 ed.), Pt. II, Rules for Courts-Martial (R.C.M.) 1106 and 1106A, a copy of the recording of all open sessions of the court-martial, and copies of, or access to, the evidence admitted at the court-martial, and appellate exhibits. Sealed and classified court-martial recordings or materials must be

authorized by a military judge in accordance with R.C.M. 1106 and 1106A. The term victim is defined in R.C.M. 1106A(b)(2).

K. To the accused or the victim of an offense of which the accused was charged if the victim testified during the proceeding, and any victim named in a specification of which the accused was charged without regards to the findings of the court-martial, a copy of the record of trial per the Manual for Courts-Martial (2019 ed.), Pt. II, Rules for Courts-Martial (R.C.M.) 1112(e). Any sealed exhibits, classified information, or closed sessions of the court-martial shall not be provided per R.C.M 1112(e)(3). The contents of the record of trial are outlined in R.C.M. 1112(b) and the term victim is defined in R.C.M. 1106A(b)(2).

L. To the Veterans Administration (VA) to assist USCG in determining the individual's entitlement to benefits administered by the VA.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: DHS/USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: USCG retrieves records by the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS: All General Courts-Martial and Special Courts-Martial records involving Bad Conduct Discharge are permanent. Transfer to Federal Records Center (FRC) 2 years after date of final action. Transfer to the National Archives and Records Administration (NARA) 10 years after final action (AUTH: NC1-26-76-2, Item 384a). Special Courts-Martial other than those involving Bad Conduct Discharges are temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1-26-76-2, Item 384b). Summary Courts-Martial convened after 5 May 1950 are Temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1-26-76-2, Item 384c(1)).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: DHS/USCG safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES: The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and JRA if applicable, because it is a law enforcement system. However, DHS/USCG will consider individual requests to determine whether or not information

may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and United States Coast Guard Freedom of Information Act (FOIA) Officer whose contact information can be found at <http://www.dhs.gov/foia> under "Contact Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, D.C. 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. sec. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;

- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES: For records covered by the Privacy Act or covered JRA records, see "Record Access Procedures" above.

NOTIFICATION PROCEDURES: See "Record Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: Pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

HISTORY: 79 FR 64815 (October 31, 2014); 76 FR 39245 (July 6, 2011); 76 FR 27847 (May 13, 2011); 73 FR 64961 (October 31, 2008).

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Department of Homeland Security.
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